INSTRUCTIONS:

1. This paper contains four questions. Unless otherwise indicated, references to the Companies Act are to the Companies Act 71 of 2008.

2. Answer any three questions. All questions carry equal marks.

3. Where appropriate, refer in your answers to relevant decided cases.

4. This is a closed book examination; no materials of any kind may be brought into the examination venue or consulted during the examination.

5. Students are requested, in their own interests, to write legibly.
QUESTION 1

The Companies Act 71 of 2008 provides in section 163 that –

“(1) A shareholder or a director of a company may apply to a court for relief if –

(a) any act or omission of the company, or a related person, has had a result that is
oppressive or unfairly prejudicial to, or that unfairly disregards the interests of, the
applicant;

(b) the business of the company, or a related person, is being or has been carried on
or conducted in a manner that is oppressive or unfairly prejudicial to, or that unfairly
disregards the interests of, the applicant.

(2) Upon considering an application in terms of subsection (1), the court may make
any interim or final order it considers fit.”

Discuss, in the light of the similar provisions of the Companies Act 61 of 1973 and similar
provisions in the English companies legislation, the kinds of conduct that the courts are likely
to regard as falling within the scope of sub-sections (1)(a) and (b) above, and the kinds of
orders that the courts have, in the past, made to grant relief from such conduct.

[Total Q1: 20 marks]

QUESTION 2

The Companies Act 71 of 2008 provides in section 76 that a director of a company –

"may not use the position of director or any information obtained while acting in
the capacity of director to gain an advantage for the director …"

Discuss the way in which the courts are likely to interpret this provision in the light of the
similar common law principle, and include in your answer a discussion of the decision in
Regal Hastings Ltd v Gulliver [1942] 1 All ER 378 (HL) (and the order made by the court in
this case) and any other relevant decisions of the courts.

[Total Q2: 20 marks]
QUESTION 3

Discuss the concept of the gross or unconscionable abuse of juristic personality as a ground for piercing the corporate veil as envisaged in section 65 of the Close Corporations Act 69 of 1984 and section 20(9) of the Companies Act 71 of 2008 and the principles in this regard that were laid down in Airport Cold Storage (Pty) Ltd v Ebrahim 2008 (2) SA 303 (C) and in Ex parte Gore NO [2013] ZAWCHC 9.

[Total Q3: 20 marks]

QUESTION 4

Section 424(1) of the Companies Act 61 of 1973 states that–

"where it appears, whether it be in a winding-up, judicial management or otherwise, that any business of the company was or is being carried on recklessly or with intent to defraud creditors of the company or creditors of any other person or for any fraudulent purpose … the Court may … declare that any person who was knowingly party to the carrying on of the business in the manner aforesaid shall be personally responsible for all or any of the debts or other liabilities of the company as the Court may direct”.

Explain the significance of this statutory provision and (in the light of decided cases) explain the circumstances in which a court could hold that person’s conduct brought him or her within the scope of the above provision. Explain also whether section 424 continues to apply after the coming into force of the Companies Act 71 of 2008.

[Total Q4: 20 marks]